IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 302 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

REVABHAI MAGANDAS

Versus

RAJMATA DEVKUNVERBA

Appearance:

1. Appeal from Order No. 302 of 1989

(MR MC KAPADIA) for Petitioner No. 1

NOTICE NOT RECD BACK for Petitioners No. 1,2

MR VASANT S SHAH for Respondents No. 1-3

MR KC SHAH AGP for Respondent No. 4

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/10/2001

ORAL JUDGEMENT

This is an appeal of 1989, which is arising out of impugned order dated 29.7.1989 dismissing application Ex.76 in Special Civil Suit No.100/82. In para 12(E) of the memo of appeal, it is prayed for pending hearing of final disposal of the suit the proceedings of Special Civil Suit No.100/892 pending before the court of Joint Civil Judge (S.D.), Mehsana be stayed. This appeal was straightaway admitted by the learned Single Judge of this court on 1.9.1989 and filing separate application for interim relief was dispensed with. By way of ad-interim relief, respondent No.5 was directed to maintain status quo as on that day. Interim relief, as prayed for in para 10(E) of this appeal was specifically refused. Notice of this appeal was served upon all the respondents and in response to that Mr.Vasant Shah appears for respondent Nos.1 to 3 and Shri K.C.Shah, AGP appears for respondent No.4-Charity Commissioner but though served no one appears for respondent No.5 against whom ad-interim relief passed on 1.9.1989. Unfortunately, during the pendency and final disposal of this appeal, Shri M.C.Kapadia, who had filed this appeal for the appellants died, therefore, notice was ordered to be issued to the appellants by the office of this court way back in 1998 i.e. almost 3 years from today. The endorsement made by the office shows that the notice issued to the appellants have not received back served or unserved. In ordinary circumstances, the appellants were required to be served with a notice to make alternative arrangement on their behalf in this matter to represent their case. But the fact is that while admitting this appeal, the learned Single Judge of this court specifically refused prayer made in para 12(E) of this appeal to stay the further proceedings in Special Civil Suit No.100/82 pending before the court of Jt. Civil Judge (S.D.), Mehsana, therefore, no fresh notice is issued to the appellants as by now, most probably the Special Civil Suit which is of 1982 must have come to an end. Even if it has not come to an end, nothing can be done after lapse of more than 12 years of passing of the impugned order by the learned Trial Judge dismissing the application Ex.76. Even on merits it had no substance. However, interest of justice would be served by directing the learned trial court to decide the Special Civil Suit No.100/82, if it is not so far decided and till then the respondent No.5 should be ordered to maintain status quo as ordered by the learned Single Judge way back on 1.9.1989.

Accordingly, this appeal is disposed of with a direction to the learned Trial Judge to decide the Special Civil Suit No.100/82, if the same is not decided so far latest by 31.12.2002. Parties shall fully

cooperate with the final disposal of the suit before the trial court. Till then, the respondent No.5 shall maintain status quo as ordered by the learned Single Judge of this court on 1.9.1989.

(B.J.Shethna, J.)

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